(1) 95-1580

No. _____

Supreme Court, U.S.
FILED
APR 1 1996

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1995

Robert F. and Joanne M. Smith,

Petitioners

vs.

The State of New Hampshire Board of Licensure for Land Surveyors, et al.,

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Robert F. Smith, pro se
Joanne M. Smith, pro se
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90 pp

QUESTIONS PRESENTED

1. Is the New Hampshire State Legislature the constitutional authority for the enactment of statutory law?

2. Did the New Hampshire State Legislature under N.H. Rev. Stat. Ann., 310-A:53(1) mandate that the profession of land surveyor be regulated?

3. Did the New Hampshire State Legislature mandate under N.H. Rev. Stat. Ann., 310-A:58 VIII that all of the Board's hearings be consistent with the Anglo-Saxon (constitutional) principles of due process?

4. Did the New Hampshire State Legislature enact N.H. Rev. Stat. Ann., 310-A:71 in order to satisfy the requirements of due process?

5. Does N.H. Rev. Stat. Ann. 310-A:71 clearly mandate by the word "shall" that a hearing shall be held on all written complaints?

6. Does the New Hampshire State Legislature in RSA 310-A:71 and RSA 21:2 (1994 Supp.) intend the word "shall' be mandatory not discretionary?

7. Did the Respondent Board violate the law, N.H. Rev. Stat. Ann., 310-A:71, by dismissing a complaint without a hearing?

8. Was the Respondent Board's order dismissing Petitioners' complaint without a hearing void?

9. If the order written is void, is it necessary to file an appeal?

10. Does RSA 541:1 (Motion for Rehearing) apply if a complaint is dismissed without a hearing?

11. Does N.H. RSA 541:6 (Appeal to N.H. Supreme Court) apply if a complaint is dismissed without a hearing?

12. Does N.H. RSA:490:4 (Petition extraordinary Writ) apply if a complaint is dismissed without a hearing?

13. Based on the legislative intent of RSA 310-A:71, did the Respondents violate Petitioners' First, Fifth and Fourteenth Amendment rights?

14. Was the Respondents' dismissal of Petitioners' complaint in violation of RSA 310-A:71 arbitrary and unreasonable?

15. Was the Respondents' dismissal of Petitioners' complaint in violation of RSA 310-A:71 and the Respondents' knowledge of the "state of the law" egregious?

16. Was the authorization, by the State of New Hampshire's Office of Attorney General, for the Respondent Board's dismissal of Petitioners' complaint an egregious, arbitrary and unreasonable deprivation of substantive due process?

17. Was the dismissal of Petitioners' complaint, the promulgation of a fraudulent order to damage Petitioners in the courts, a violation of

Petitioners' civil rights under 42 U.S.C.A. Section 1983?

18. Does the equal protection clause of the Fourteenth Amendment (1), mean all persons who are U.S. citizens and under similar circumstances (e.g., complaints to the Respondent Board) to be treated equally?

19. Did each Petitioner have, by law, the right to bring his or her case before the courts as individuals (single legal entities), not as some identifiable suspect class?

LIST OF PARTIES

The State of New Hampshire Board of Licensure for Land Surveyors

---

Board members individually and jointly

Robert Carpenter; LLS; Jack Kelly; LLS

Peter Hodges, LLS; Melvin Jenkins, LLS

Judith McDonald, Public Member, &

David R. Noyes, LLS

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NEW HAMPSHIRE. Appendix D: January 2, 1996, order of UNITED STATES COURT OF APPEALS FOR THE FIRST DISTRICT denying Petitioners' MOTION FOR RECONSIDERATION WITH HEARING.

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Appendix G: Excerpt, Escoe v. Zerbst, Warden, 295 U.S. 490, 494.

Appendix H: Respondent Noyes' Counterclaim.

Appendix I: Excerpt, Davis v. Scherer, 468 U.S. 183, 202.

Appendix J: New Hampshire RSA 310-A:58.

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Appendix M: New Hampshire Board of Licensure for Land Surveyors letter of February 8, 1991.

Appendix N: Excerpt, New Hampshire Board of Lincensures for Land Surveyors business meeting of May 16, 1991.

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Appendix P: Order of New Hampshire Superior Court of November 2, 1994.

Appendix Q: Excerpt, Cover Sheet, United States District Court District of N.H.

Appendix R: Excerpt, Correa-Martinez v. Arrillaga-Belandez, 903 F.2d 49, 53 (1st Cir. 1990)

Appendix S: U.S.C. Amends Amend Five

Appendix T: Excerpt, California v. Bakke, 438 U.S. 265

Appendix U: 42 U.S.C. Sec. 1983.

Appendix V: New Hampshire RSA 310-A: 53(1).

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MATERIAL EXHIBITS/DOCUMENTS

Appendix to Petitioners Complaint U.S. District Court.

New Hampshire RSA 310-A:71, Complaint Appendix Exhibits 1-4, set forth as Appendix E to this Petition.

New Hampshire Board of Licensures for Land Surveyors Order of May 16, 1991, Complant Appendix Exhibit 16, set forth as Appendix F to this Petition.

New Hampshire Board of Licensure for Land Surveyors letter of February 8, 1991, Complaint Appendix Exhibit 12, set forth as Appendix M to this Petition.

Escoe v. Zerbst, Warden, 295 U.S. 490, 494. Complaint Appendix Exhibit 17, set forth as Appendix G to this Petition.

Order of New Hampshire Superior Court of November 2, 1994, Attachment #1, Petitioners' MOTION FOR RECONSIDERATION WITH HEARING, set forth as Appendix P to this Petition.

Petitioners' APPENDIX TO BRIEF UNITED STATES COURT OF APPEALS FOR THE FIRST DISTRICT

New Hampshire RSA 310-A:71, Appeals Appendix A, set forth as Appendix E to this Petition.

New Hampshire Board of Licensure for Land Surveyors letter of February 8, 1991, Appeals Appendix D, set forth as Appendix M to this Petition.

New Hampshire Board of Licensures for Land Surveyors Order of May 16, 1991, and promulgated on September 10, 1991, Appeals Appendix E, set forth as Appendix F of this Petition.

Order of New Hampshire Superior Court of November 2, 1994, Attachment #1, MOTION FOR RECONSIDERATION U.S. District Court, Appeals Appendix F, set forth as Appendix P to this Petition.

New Hampshire Board of Lincensures for Land Surveyors business meeting records of May 16, 1991, Attachment 1,

Petitioners' MOTION FOR RECONSIDERATION WITH HEARING, U.S.COURT OF APPEALS,.set forth as Appendix N to this Petition.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment One is set forth in Appendix L.

United States Constitution Amendment Fourteen, section 1, is set forth in Appendix K.

United States Constitution Amemdment Five is set forth in Appendix S.

28 U.S.C. Section 1254(1).

42 U.S.C. Section 1983 is set forth in Appendix U.

New Hampshire RSA 310-A:53(1) is set forth in Appendix V.

New Hampshire RSA 310-A:58 is set forth in Appendix J.

New Hampshire RSA 541

New Hampshire RSA 21:(1)(2) (1994 Supp.)

OPINIONS BELOW

The opinion of the UNITED STATES COURT OF APPEALS FOR THE FIRST DISTRICT appears at Appendix (A) to this petition and is unpublished.

The opinions of the UNITED STATES DISTRICT COURT DISTRICT OF NEW HAMPSHIRE appears as appendices (B) & (C) to this petition and are unpublished.

JURISDICTION

The date which the UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT decided Petitioners' case was November 28, 1995. A timely MOTION FOR RECONSIDERATION WITH HEARING was denied by UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT January 2, 1996, and a copy of the order denying same appears at Appendix (D). The jurisdiction of this Court is involked under 28 U.S.C. Sec. 1254(1).

No. _____

IN THE SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM 1995

Robert F. Smith & Joanne M. Smith,

Petitioners

vs.

The State of New Hampshire Board of Licensure for Land Surveyors, et al.,

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Petitioners, Robert F. and Joanne M. Smith, respectfully pray that a writ of certiorari be issued to review the judgement and opinion of the UNITED

STATES COURT OF APPEALS FOR THE FIRST CIRCUIT affirming the ORDERS of the U.S. District Court.

STATEMENT OF THE CASE

The use of the term Respondent Board means the New Hampshire Board of Licensure for Land Surveyors and its members jointly and individually as listed at Page iv.

The factual aspects of this case began in 1988 when Petitioners filed a Petition To Quiet Title, New Hampshire Superior Court, Rockingham County, Exeter, N.H.

The U.S. District Court's Order of March 8, 1995 (Appendix B) places in perspective the issue before the courts.

Petitioners take exception to two statements of the district court: (1) is was not a boundary line dispute but involved a PETITION TO QUIET TITLE and; (2) the Petitioners filed their claim against Respondent Noyes in the state's

superior court only after the Respondent Board dismissed Petitioners' complaint without a hearing in violation of N.H. RSA 310-A:71 (Appendix E).

The Respondent Board's unlawful order (Appendix F) defines the reason Petitioners filed their complaint to the Respondent Board, Respondent Noyes' testimony at trial.

The Petitioners followed recognized standard procedure, New Hampshire Law, by filling Petitioners' complaint to the Respondent Board first.

When the Respondent Board issued its order (Appendix F) without a hearing, Petitioners followed the opinion of this Court, that without a hearing as mandated by statute, the ensuing order was "void," Escoe v. Zerbst, Warden 295 U.S. 490, 494 (1935) (Appendix G), filed their complaint in the New Hampshire Superior Court.

Respondent Noyes with legal counsel filed a counterclaim (Appendix H) in the superior court using the Respondent Board's Order (Appendix F), knowing a hearing had not been held and as a reasonable person would have known that Board's Order violated clearly established statutory or constitutional rights, See Davis v. Scherer, 468 U.S. 183, 206 (Appendix I) and was void ESCO v. Zerbst, Warden at 494 (Appendix G).

The legislative mandate under RSA 310-A:71 (Appendix E) is that a hearing "shall" be held on all written complaints.

The legislative mandate under N.H. RSA 310-A:58 VIII (Appendix J) is that hearings under RSA 310-A:71 be consistent with due process.

Due process is the law of the land U.S.C.A. Amends Amend 14 (Appendix K).

The Respondent Board failed repeatedly to hold a hearing consistent with the

legislative mandate of RSA 310-A:71 (Appendix E) and Petitioners exercised their First Amendment rights (Appendix L) seeking relief from the Respondent Board's intransigent behaviour by speaking directly to the then Governer's legal counsel, a State Senator and U.S. Senator.

It was only after Petitioners exercised their First Amendment rights (Appendix L) and were informed by the State Senator a hearing would be held, that the Respondent Board forwarded to Petitioners a letter dated Pebruary 8, 1991 (Appendix M), notifying Petitioners that a prehearing conference would be held concerning Petitioners' complaint.

Within the body of that letter (Appendix M) the Respondent Board, knowing the "state of the law," N.H. RSA 310-A:71 (Appendix E), stipulated that there would be hearing.

On March 14, 1991, that prehearing conference was held at Respondent Board's Offices, Concord, N.H., recorded and transcribed.

The Respondent Board, on September 10, 1991, (See Appendix H for Respondent Noyes' verification as to date) and without a hearing mailed to Petitioners, by first class mail, U.S. Postal Service, Concord, N.H., an order of dismissal (Appendix F) and the same to Respondent Noyes .

This decision to dismiss Petitioners' complaint by Respondent Board was decided at a reguarly scheduled business meeting (Appendix F), not a judicial hearing as mandated under N.H. RSA 310-A:71 (Appendix E).

This action by the Respondent Board was in contradiction to the stipulation in Respondent Board's letter of February 8, 1991 (Appendix M). This action by the Respondent Board was in fact arbitrary,

capricious, unreasonable and ignored the legislative intent of RSA 310-A:71 (Appendix E).

The stipulation in Respondent Board's letter (Appendix M) to Petitioners guaranteeing a hearing consistent with constitutional due process was an intentional fraud.

This decision to dismiss without a hearing and in defiance to the legislative intent of RSA 310-A:71 (Appendix E) was reviewed and authorized by Respondent Board's legal counsel, the State of New Hampshire's Attorney General's Office (Appendix N).

The New Hampshire State Legislature RSA 21, STATUTORY CONSTRUCTION, under RSA 21:2 (1994 Supp.), COMMON USAGE, cites as a standard of review Appeal of Astro Spectacular 138 N.H. 298 (1994), 639 A.2d 249 (Appendix O).

This decision coincides with this Court's opinion Escoe v. Zerbst, Warden

295 U.S. 490, 494 (Appendix G) that courts cannot ignore the plain language of statutory construction. See also: N.H. Health Serv. v. Commm'n of Ins., 122 N.H. 268; Appeal of John Denman, 120 N.H. 568-572 (1980); Silva v. Botch & a. 120 N.H. 600, 601 (1980); Kilroy v. Troast, 117 N.H. 598 (1977); In re Russell C. 120 N.H. 260, 264 414 A.2d 934, 936 (1980) (Citing Escoe v. Zerbst. Warden, 295 U.S. 490, 494).

Petitioners' filed a complaint in the New Hampshire Super ior Court, County of Rockingham, Exeter, N.H. Respondent Noyes filed a counterclaim Appendix H).

This superior court dismisssed Petitioners' complaint. Petitioners appeal on that dismissal is on hold, pending a jury trial on Respondent Noyes' counterclaim (Appendix H).

The court in that case has allowed Respondent Noyes to attach our home (Appendix P), as the court has ruled

that Petitioners; (1) failed to appeal the Respondent Board's decision even though Petitioners have repeatidly stated that a hearing was not held as mandated by N.H. RSA 310-A:71 (Appendix E) and void as this Court has clearly stated in Escoe v. Zerbst., at 494 (Appendix G) and; (2) that by Petitioners exercising the First Amendment rights seeking help in requiring Respondent Board to hold a hearing as mandated by N.H. RSA 310-A:71 (Appendix E) damaged Respondent Noyes' professional reputation.

Based on Petitioners understanding of this Court's opinion Esco v. Zerbst, at 494 (Appendix G) and the opposite views taken in the state's superior court's order (Appendix P) and the Circuit Court's Order of November 28, 1995 (Appendix A), Petitioners now find themselves in a Catch 22 nightmare.

The U.S.District Court (Appendix B) dismissed this First Amendment claim but failed to take into consideration that the Respondents had taken exception to Petitioners exercising their First Amendment rights to seek relief from others because of the Respondent Board's intransigent behaviour and punished Petitioners by dismissing their complaint, despite the safeguard and/or stipulation given in its letter of February 8, 1991 (Appendix M) and allowed Respondent Noyes to use the Board's unlawful order to damage the Petitioners in the state court (Appendix H).

That these facts were well set forth in the Petitioners' Complaint with Appendix to the U.S. District Court and set forth in both Petitioners' Brief with Appendix and Petitioners MOTION FOR RECONSIDERATION WITH HEARING to the U.S. Circuit Court.

The district court as well as the circuit court failed to take into consideration, even though it was clearly stated in the cover sheet (Appendix O) Petitioners' complaint to the district court and within the body of the complaint that a hearing had not been held as mandated in N.H. RSA 310-A:71 (Appendix E).

The district court failed to acknowledge that the Respondent Board failed to carry out the legislative intent of N.H. RSA 310-A:71 (Appendix E) and the Respondent Board's action was arbitrary, unreasonable, egregious and that the due process clause of the Fourteenth Amendment (Appendix K) contains a substantive component that bars such arbitrary action See Daniels v. Williams, 474 U.S. at 331; Zinermon v. Burch, 494 U.S. 113, 125.

The district court in its order (Appendix B) stated the Petitioners had

no property rights therefore their complaint was a defective due process claim and granted Petitioners ten days to respond with supporting law.

Petitioners responded in a timely manner againing explaining that a hearing had not been held and the Respondent Board's order (Appendix F) was void and that by dismissing Petitioners' complaint denied Petitioners equal protection under law.

The district court citing Chiplin Enterprises , Inc. v. City of Lebanon, 712 F.2d 1524, 1528 (1st Cir. (1983) then dismissed Petitioners' complaint (Appendix C) by stating Petitioners have failed to allege any facts to support an equal rights claim and were merely relabeling a deficient due process claim under the equal protection clause.

The district court in its order (Appendix B) cites Correa-Martinez v. Arrillaga-Belandez, 903 F.2d 49, 53 (1st

Cir. 1990) (quoting Board of Regents 408 U.S. at 577) reinforces what Petitioners have always maintained that the New Hampshire State Legislature under N.H. RSA 310-A:71 conferred upon the Petitioners their Fourteenth Amendment property rights, (albeit intangiable property rights) to due process (Appendix R).

Petitioners in their pleadings have repeatedly informed courts that it was unnessary to state a due process claim as the face of Petitioners' complaint indicated a hearing had not been held as mandated by N.H. RSA 310-A:71 (Appendix E).

Petitioners felt that a reasonable person reading their complaint would know that Petitioners had been arbitrarily, unreasonably and capriciously deprived of both substantive and procedural due process.

"...[T]he doctrine of substantive due process prevents the abuse of government power that shocks the conscience, or action that is legally irrational in that it is not sufficiently keyed to any legitimate state interests...." See Nestor Colon Medina & Sucesores, Inc. v. Custodio, 964 F.2d 32, 45 (1st Cir. 1992).

Petitioners have always mantained that the legislative mandate in N.H. RSA 310-A:71 (Appendix E) invested in the Petitioners a fundamental right (interest), as quaranteed under the First, (Appendix L), Fifth (Appendix S) and Fourteenth Amendments (Appendix K) in the proceedings before the Respondent Board.

The district court in its order of March 8, 1995 (Appendix B) stated that for the Petitioners to establish an equal protection claim Petitioners failed to either establish a fundamental

right or allege facts to show that the Respondents intent- ionally discriminated against Petitioners as a member of an identifiable class.

Black's Legal Dictionary, 5th. Ed., (1979) describes fundamental right or the Bill of Rights as follows:

"...[t]he summary of rights and liberties of the people, or the principles of constitutional law deemed essential and fundamental...[that] portion of the Constitution guaranteeing rights and privileges to the individual; i.e. first ten amendments of U.S. Constitution...."

Justice Powell in announcing the judgement of this Court in Regents of the University of California v. Bakke, 438 U.S. 265, and which Petitioners consider a landmark case, defined once and for all times the meaning of "person" written into the Fourteenth Amendment (Appendix T).

Based on the Respondent Board's letter of February 8, 1991 (Appendix M), the fraudulent stipulation that a hearing would be held, clearly and unmistakingly shows the Respondent Board intended to from the outset deny Petitioners' rights to both due process and equal protection by dismissing Petitioners' complaint without a hearing (Appendix E) and the promulgation of its fraudulent order (Appendix F).

That this intentional act by Respondent Board was unreasonable, arbitrary, and an egregious deprivation of Petitioners' substantive due process rights, procedural due process rights, and equal protection under law, each an actionable constitutional torts .

That this action by Respondent Board was unreasonable, arbitrary and egregious, violating Petitioners civil rights under 42 U.S.C.A. Sec. 1983

(Appendix U) also a independent constitutional tort.

That this act, unlawful dismissal, was knowingly and intentionally done under the Respondent's requlatory authority N.H. RSA 310-A:53(1) (Appendix V), its rulemaking authority, N.H. RSA 310-A:58 (Appendix J) and in violation of N.H. RSA 310-A:71 (Appendix E) and Responents fully intended to damage Petitioners by promulgation of an unlawful order (Appendix P) clearly actionable under 42 U.S.C.A. Sec. 1983.

That the Respondents (Board and Noyes) conspired to damage Petitioners in the state's court, which they did do, through Respondent Noyes' counter- claim (Appendix H) and eventual attachment of Petitioners' home (Appendix P).

The New Hampshire State Legislature under N.H. RSA 310-A:71 (Appendix E) conferred upon the Petitioners the right to a hearing consistent with anglo-saxon

jurisprudence, See Davis v. Scherer, 468 U.S. 183, 202, (Appendix I); Also see Tadano v. Manney 160 F.2d 665, 667 (9th Cir. 1977).

This Court has in its opinion Escoe v. Zerbst . Warden at 494, (Appendix G) stated that courts must follow the legislative intent of statute and do not have the power to do otherwise.

The New Hampshire Supreme Court as cited in N.H. RSA 21:2, Appeal of Astro Spectacular, 138 N.H. 298 at 300 (Appendix O) in its opinion clearly emphasis that courts must follow the legislative language as set forth in statutes.

The circuit court in its order of November 28, 1995 (Appendix A) citing Licari v. Ferruzzi, 22 F.3d 344,348 (1st Cir. 1994) affirming the District Court's Order (Appendix C) stated:

"...[E]ven if a protected interest could be identified, however, an

unauthorized deviation from state procedure does not arise to the level of a constitutional due process violation unless the state fails to provide a suitable post- deprivation remedy...."

Although the New Hampshire Legislature had provided in N.H. RSA 310-A:71 a standard of review for Respondent Board's decisions under N.H. RSA 541:1 (Motion for Rehearing), and if denied under N.H.RSA 541:6 (Notice of Appeal), or N.H. RSA 490:4 (extraordinary remedy), these procedures were not available to Petitioners, as a hearing was not held as mandated by N.H. RSA 310-A:71 (Appendix E) and an unlawful order published and promulgated without due process.

Petitioners have steadfastly maintained that if a hearing is not held as mandated by N.H. RSA 310-A:71 (Appendix E) and that where the legislative remedy under RSA 541 or RSA

490:4 is adequate in theory, it was not available to Petitioners. See Monroe v. Pape, 365 U.S. 167 at 173-174, 183 (1961).

Petitioners therefore exercised their constitutional rights by filing their complaint on September 1, 1994, under U.S.C.Amendments One (APPENDIX L), Fourteen (Appendix K) and under 42 U.S.C.A. Sec. 1983 (Appendix U), to the UNITED STATES DISTRICT COURT DISTRICT OF NEW HAMPSHIRE for the following reasons: (1) a hearing was not held as mandated under N.H. RSA 310-A:71 (Appendix E) denying Petitioners' their rights to due process; (2) a fraudulent order (Appendix F) promulgated to the state's courts and public in violation of Petitioners' rights to due process and; (3) Respondents under its statutory authority intended to damage Petitioners in the state's courts with its fraudulent order (Appendix F).

Damage was done to Petitioners, with consent of Respondent Board, by Respondent Noyes' counterclaim (Appendix H) using Respondent Board's unlawful order (Appendix P) to damage Petitioners in person and property, by attaching Petitioners home in the state's superior court (Appendix P).

The capricious, arbitrary, unreasonable and intentional misconduct of all Respondents is causing the Petitioners great stress, emotional pain and suffering, and monetary expense.

There is also a measure of inequity in forcing innocent persons in Petitioners' position to bear the burden of redressing grievences not of their making.

Petitioners now file with this Court their WRIT OF CERTIOARI TO THE UNITED STATES COURT OF APPEAL FOR THE FIRST CIRCUIT

REASONS FOR GRANTING THE WRIT

1. The Court should grant the Petition for determining whether the Court of Appeals' decision is in conflict with this Court's opinion when it failed to use Esco v. Zerbst, Warden offered as a standard of review. Escoe sets out the following: (A) if a mandated hearing is denied all together the ensuing order is void; (B) that courts must follow the legislative intent of the word "shall" as written into statutory construction and; (C) that courts do not have the power to do otherwise.

2. The Court should grant the Petition to resolve the question whether the Court of Appeals' opinion is in conflict with this Court's opinions by failing to find and rule Petitioners had a vested interest in due process as conferred to Petitioners under N.H. RSA 310-A:71.

3. The Court should grant the Petition to clarify the question whether the Court of Appeals' opinion is in conflict with this Court's opinions, failing to find and rule that Petitioners' equal protection claims under Amendment Fourteen are not deficient claims. The District Court's opinion as affirmed by the Court of Appeals conflicts with this Court's decision, Regents of the University of California v. Bakke, 438 U.S. 265, that under similar circumstances equal protection is accorded each and every citizen equally.

4. The Court should grant the Petition for determining whether the Court of Appeals' opinion by affirming the District Court's opinion, is in conflict with this Court's opinion, Regents v. Bakke, by failing to find and rule that Petitioners' civil rights were violated by Respondent Board under 42

U.S.C.A. Sec. 1983, a constitutional tort.

5. The Court should grant the Petition for determining whether or not the Court of Appeals' opinion is in conflict with this Court's opinions, failing to find and rule Petitioners were deprived of procedural due process (RSA 310-A:71) rights by Respondent Board, a constitutional tort.

6. The Court should grant the Petition for determining whether the Circuit Court failed to find and rule that the Respondent Board's actions were egregious, unreasonable and arbitrary, therefore a deprivation of substantive due process, a constitutional tort.

7. The Court should grant the Petition to clarify the standard of review for the legislative intent (statutory construction) of N.H. RSA 310-A:71; 541:1; 541:6 and; 490:4 which the Court of Appeals based on the facts, evidence,

and opinion of this Court (Escoe v. Zerbst), Petitioners presented for review, were so grossily misapplied.

CONCLUSION

For the foregoing reasons, the PETITION FOR WRIT OF CERTIOARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT should be granted.

Dated: 3/30/96

Respectfully submitted,

Robert P. Smith pro se

Joanne M. Smith pro se

{NOT FOR PUBLICATION}

UNITED STATES COURT OF APPEALS

FOR THE FIRST DISTRICT

No. 95-1520

ROBERT F. AND JOANNE M. SMITH,

Plaintiffs, Appellants,

v.

NEW HAMPSHIRE BOARD OF LICENSURE FOR LAND SURVEYORS, ET AL.,

Defendants, Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW HAMPSHIRE

{Hon. Paul J. Barbadoro, U.S. District Judge}

Before

Cyrr, Boudin and Lynch

Circuit Judges.

APPENDIX A

Robert F. Smith and Joanne M. Smith on brief pro se.

Jeffery R. Howard, Attorney General, and Stephen J. Judge, Senior Assistant Attorney General, on brief for appellees New Hampshire Board of Land Surveyors and Members.

Donald F. Whittum, and Cooper, Hall, Whittum & Shillaber, P.C. on brief for appellee David Rhichard Noyes.

November 28, 1995

Per Curiam. Plaintiffs-appelants filed an amended complaint under 42 U.S.C.A. Sec. 1983 alleging violations of the First Amendment, due process and equal protection clauses, all based on the refusal of the Mew Hampshire Board of Licensure to hold a formal hearing on plaintiffs' disciplinary charges agains t defendant Noyes. The district court

dismissed the complaint for failure to state a cognizable claim.

Plaintiffs challenge the court's ruling that they did not plead the deprivation of an interest protected by the due process clause. They say that the court erroneously failed to recognize a constitutional deprivation in the alleged violation of their state laws to notice and hearing on their disciplinary complaint against Noyes. Even if a protected interest could be identified, however, an unauthorized deviation from state procedure does nor rise to the level of a constitutional due process violation unless the state fails to provide a suitable post-deprivation remedy. See Licari v. Ferruzzi. New Hampshire law provides such a remedy through rehearing and direct appeal of Board orders, see N.H. Rev. Stat. Ann. Sec. 310-A:71 (1995) ("Orders of the board shall be subject

to rehearing and appeal in the manner prescribed by RSA 541."); N.H. Rev. Stat, Ann. Sects.541:1-541:6 (1974 & Supp. 1994), or petition for extraordinary writ. See N.H. Rev. Stat. Ann. Sec. 490:4 (1983).

Plaintiffs' remaining contentions fail substantially for the reasons stated by the district court.

Revewing the district court's decision de novo the judgement is affirmed.

U.S. District Court
District of New Hampshire
FILED
Mar. 8 1995

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW HAMPSHIRE

Robert F. Smith, et al

v.

The State of New Hampshire Board of Licensure for Land Surveyors, et al.

No. 94-463-B

ORDER

Plaintiffs, Robert F, and Joanne M. Smith, appearing pro se, have filed a civil rights action for damaged against the New Hampshire Board of Licensure for Land surveyors, members of the board, and Richard Noyes. Pending before me are defendants' motions to dismiss their claims against the Board and its members in their official capacities, but stay dismissal of their claims against Noyes and Board members sued individually pending the Smiths' response.

I. STANDARD OF REVIEW

When considering motions to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), this court must accept all material factual allegations as true and make all reasonable inferences in favor of the plaintiffs. Coyne v. Somerville, 972 F.2d 440, 442-43 (1st Cir. 1992). This court must liberally construe a pro se complaint and grant dismissal only if plaintiffs can prove no facts entitling them to relief. Rockwell v. Cape Cod Hospital 26 F3d, 254 255 (1st Cir. 1994)

BACKGROUND

The Smiths believe that they lost their boundary dispute in a state court due to testimony of defendant Richard Noyes, a land surveyor who appeared as a witness for the opposition. The Smiths filed a complaint against Noyes with the New Hampshire Board of Licensure for Land Surveyors ("Board"). The Smiths

also sued Noyes in superior court alleging fraud and misrepresentation and violation of civil rights statutes. Noyes filed a counterclaim alleging harassment. On August 18, 1992, the superior court dismissed the Smiths' complaint on the grounds that the state law claims were barred by the statutes of limitations and they failed to state a civil rights claim. The New Hampshire Supreme Court declined the Smiths' notice of appeal on November 18, 1992, because a final decision on the merits had not been made by the lower court,[1] (SEE this Appendix 9-10) and the Smiths decided not to file an inter- locutory appeal. The Smiths' petition to the United States Supreme Court for writ of certiorari was denied on May 17, 1993.

III DISCUSSION

As I explained at the status conference in this case held on January 13, 1995, the Eleventh Amendment bars

suits for damages in federal courts against a state includung its agencies and members sued in their official capacity. See Will v. Michigan Dep't. of State Police, 491 U.S. 58, 70-71 & n.10(1989); Johnson v. Rodrigues, 943 F2d. 104, 108-09 (1st. Cir. 1991), cert. denied, 112 S.Ct. 948 (1992). Therefore the Smiths' claims against the Board and its members sued in their official capacity are dismissed.

In order to maintain a civil rights action under 42 U.S.C.A. Sec. 1983,[2], plaintiffs must allege that they have been deprived of a federal constitutional or statutory right by persons acting under color of state law. Wtterson v. Page, 987 F.2d 1, 7 (1st Cir. 1993). Reading the allegations in the Smiths' complaint liberally, and in the light of explanations in their objections to defendants' motions to dismiss, they charge the defendants with

violating their First Amendmend right to seek redress of grievance and with denying their Fourteenth Amendment right to due process. Specifically, they allege that the Board failed to follow procedural requirements in deciding not to discipline Noyes and that the Board members conspired with Noyes to support his counterclaim against the Smiths.

The Smiths' First Amendmend claims lacks merit as they were afforded an opportunity to file their complaint against Noyes with the Board. The First Amrndment does not give the Smiths the right to favorable action on the claim, nor does it guarantee that the petition will be adressed by an unbiased decision -maker. See Templeman v. Philbrick, Civ. No. 92-409-B (3/28/94), aff'd 1994 U.S. App. LEXIS 35099 (December 14, 1994). Accordingly this claim is dismissed.

To state a Fourteenth Amendment due process claim, the Smiths first must

allege facts to show that the were deprived of a recognized property right or a sufficient property interest to involke protection from arbitrary government action.[3] See, e.g. Kentucky Dep't. of Corrections v. Thompson 490 U.S. 454, 460 (1989); Board of Regents v. Roth 408 U.S. 564, 570-71 (1972); Flemming v. Nestor, 363 U.S. 603, 610-11 (1960). See also Hoffman v. arwick, 309 F.2d 608, 618-19 (1st Cir, 1990)

"Constitutionally protected property interests originate in extra -constitutional sources; they are 'created and their dimensions are defined by existing rules of understanding that stem from an independent source such as state law....'" Correa-Martinez v. Arrillaga-Belandez 903 F.2d 49, 53 (1st Cir. (1990) (quoting Board of Regents, 408 U.S. at 577).

The Smiths cite the Board's statutory authority and procedures claiming that they are within the class of persons intended to be protected by the Board. The Smiths argue that the statutory procedure for disciplinary actions applies to them as persons who brought the complaint to the Board, but they fail to tdentify any recoqnized property interest of theirs that due process would protect.

The Board is authorized to promulgate rules of conduct proceedings for the licensing and discipline of land surveyors in New Hampshire. See Rev. Stat. Ann. Sects. 310-A;58 to :74 (1984 and Supp. 1993). Licensed land surveyors such as Noyes, who the Board may discipline by revolking or limiting their licenses to engage in their profession, have a recoqnized property interest in the Board's proceedings that raise due process considerations. See

Amsden v. Moran, 904 F.2d 748, 753-58 (1st Cir.) mot denied, 498 U.S. 936 (1990), cert. denied, 498 U.S. 1041 (1991). By contrast, the Board has no authority to award damages or impose penalities against complainants to the Board, such as the Smiths. The Board's decision whether or not to discipline a licensed surveyor, therefore, do not affect a complainant's property interest. Because the Smiths do not have a protected interest in the Board's proceedings and decision, they cannot state a Sec. 1983 cause of action based upon a alleged violation of their due process rights by the Board.[4]

The defendants moved to dismiss on a variety of grounds[5] but did not raise the issue that the Smiths failed to allege a protected property interest under the Fourteenth Amendmendment.

Although the Smiths' pleading deficiency would ordinarily require dis-

missal of the complaint, I will allow them ten days from the date of this order to respond to the grounds of dismissal that I have raised.

IV. CONCLUSION

For the foregoing reasons defendants' motion to dismiss (document number 10) is granted as to the Board and its members sued in official capacities. Defendant's remaining motions to dismiss (part of document 10 and documents numbers 7 and 17) are stayed pending response in ten days by plaintiffs.

SO ORDERED:

S/_____
Paul Barbadoro
United States District Judge
March 8, 1995

cc: Robert F. Smith
Joanne M. Smith
Stephen Judge, Esq,
Donald Whittum, Esq.

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[1]Although the superior court's notice of decision dated August 18, 1992, granted Noyes' motyion to dismiss the Smiths'

claims, Noyes' counterclaims in that action remain pending.

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[2] The Smiths allege a count based upon the "standard of conduct" established by 42 U.S.C.A. Sec. 1983. Because Sec. 1983 provides no substantive rights but merely serves as a vehicle for vindicating violations of federal and statutory rights, I construe their allegations to seek damages inder Sec. 1983 for alleged violations of their constitutional rights. See Albright v. Oliver, 114 S.Ct. 807, 811 (1994).

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[3] The Smiths do not allege any facts that would suggest a violation of their liberty interests.

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[4] To the extent that the Smiths assert that the Board members engaged in a conspiracy with Noyes to wrongly

initiate or continue a civil action claim against them, they allege, if anything state law claims for conspiracy and abuse of process rather than a cognizable federal claims.

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[3] Many of the defenses raised by the defendants would serve as alternative grounds for dismissing the Smiths' claims.

U.S.District Court
District of N.H.
Filed
Apr. 13 2:49 PM '95

UNITED STATES DISTRICT COURT FOR THE

DISTRICT OF NEW HAMPSHIRE

Robert F. Smith, et al

v.

The State of New Hampshire, Board of Licensure for Land Surveyors, et al.

No. 94-463-B

ORDER

On March 8, 1995, I dismissed the claims brought by plantiffs Robert and Joanne Smith, for failure to state a cause of action but stayed dismissal of their claims against Richard Noyes and members of the Board of Licensure for Land Surveyors sued individually. I allowed plaintiffs time to respond because dismissal was based in part on an issue not raised in defendants' motion to dismiss.

APPENDIX C

In their response, plaintiffs argue their claims were not based on a violation of their Fourteenth Amendmend due process rights, but instead, were intended to state a claim for substantial violation of their equal protection rights under the Fourteenth Amendment. To state an equal protection claim, however, plaintiffs must allege a violation of a fundamental right or allege facts to show the defendants intentionally discriminated a against them as members of an identifiable class, not merely that they were treated unfairly as individuals, See Coyne v. Somerville, 972 F.2d 440, 444-45 (1st Cir. 1992); See also Huebschen v. Department of Health & Social Servs., 716 F.2d 1167, 1171 (7th Cir. 1983). Plaintiffs have alleged no facts to support an equal protection claim, bur instead have merely relabelled their deficient due process claim. See Chiplin Enterprises,

Inc., v. City of Lebanon. 712 F.2d 1524,1528 (1st Cir. 1983). As plaintiffs response provides no further justifiable grounds for their claims, I now dismiss all plaintiffs' claims against all defendants in this action.

CONCLUSION

For the forgoing reasons defendants' motions to dismiss(documents 7, 10 and 17) are granted.

SO ORDERED.

S/_____
Paul Barbadoro
United States District Judge
April 13, 1995

cc. Robert F. Smith
Joanne M. Smith
Donald Whittum, Esq.
Stephen Judge, Esq.

UNITED STATES COURT OF APPEALS

FOR THE FIRST DISTRICT

No. 95-1520

ROBERT F. SMITH AND JOANNE M. SMITH

Plaintiffs, Appelants,

v.

NEW HAMPSHIRE BOARD OF LICENSURE FOR

LAND SURVEYORS, ET AL.,

Defendants, Appellees.

Before

Cyr, Boudin and Lynch

Circuit Judges.

ORDER OF COURT

Entered January 2, 1996

Appellants' "Motion for Reconsideration [of] Court's Order of November 28, 1995 With Hearing" is denied.

By the Court:

S/_____
Janice M. O'Neil
Acting Clerk [cc: Messrs Smith, Smith, Judge and Whittum]

APPENDIX D

NEW HAMPSHIRE RSA 310-A:71

HEARINGS The board shall take no disciplinary action without a hearing. At least 14 days prior to a hearing, both parties to a disciplinary proceeding shall be served, either personally or by registered mail, with a written copy of the complaint filed and notice of the time and place for hearing. All complaints shall be objectively received and fairly heard by the board, but no complaint shall be acted upon unless in writing. A hearing shall be held on all written complaints received by the board within 3 months of the date notice of a complaint was received by the accused, unless otherwise agreed to by the parties. Written notice of all disciplinary decisions made by the board shall be given to both parties to proceeding upon their issuance. Orders of the board shall be subject to rehearing and appeal in the manner prescribed by RSA 541.

APPENDIX E

STATE OF NEW HAMPSHIRE

BOARD OF LICENSURE FOR LAND SURVEYORS

IN THE MATTER OF

Robert Smith vs. David Noyes

On March 14, 1991, a pre-hearing conference was held at the Joint Board offices located at 57 Regional Drive, Concord, New Hampshire, relative to a complaint filed by Robert Smith against David Noyes, LLS. The nature of the complaint was determined to come under New Hampshire Code of Administrative Rules, part 502, section Lan 502.01, 502.02 and 502.3, sections relative to proper research procedures; and secondarily, a question of unprofessional conduct as outlined in RSA 310-A:70 II. The first part of the complaint addresses information shown on a survey plan prepared by Mr. Noyes in 1976 and subsequent testimony in court

in 1988. The second part of the complaint addresses alleged comments made by Mr. Noyes.

The Board has considered information presented prior to and discussed at the pre-hearing conference. At a regularily scheduled meeting of the Board on May 16, 1991, the complaints were discussed and action taken as follows;

Part I Section Lan 502.01, 502.02, 502.03-

This complaint concerns the interpretation of a plan prepared by Mr. Noyes in 1976 and the allegation that information shown on his plan was contradicted by subsequent testimony provided by Mr. Noyes in court.

The Board has examined a copy of this plan and does not agree with Mr. Smith's interpretation. It is not clear to this Board that an abutter or abutters are

identified along the entire southerly line of the property.

Since this interpretation is key to Mr. Smith's complaint, the Board believes that pursuit of this matter through a full disciplinary proceeding is not warranted. This complaint is dismissed.

Part II RSA 310-A:70 II - Unprofessional Conduct

This complaint concerns statements alleged to have been made by Mr. Noyes to a contractor in the employ of Mr. Smith. This complaint is based upon statements as reported to Mr. Smith. The alleged statements were neither directed toward Mr. Smith nor made in his presence.

Since this constitutes hearsay information, the Board believes that pursuit of this matter through a full disciplinary hearing has no basis. This complaint is dismissed.

The above actions were taken by unanimous vote of the Board at their meeting on May 16, 1991. Board members in attendance were: Robert J. Carpenter, Chairman; Melvin E. Jenkins; John G. Kelly; and Judith A. MacDonald.

EXCERPT ESCOE v. ZERBST, WARDEN 295 U.S. 490 at 494 (1935)

"...[I]f these are the ends to be promoted by bringing the probationer into the presence of his judge, the Act is seen at once to be mandatory in meaning as well as mandatory in form. Statutes are nor directory when to put them in that category would result in serious impairment of the public or the private interests that they are intended to protect. French v. Edwards, supra; Lyon v. Alley, 130 U.S. 177, 185; Erhardt v. Schroeder, 155 U.S. 124, 128, 130. Such is the situation here. When a hearing is allowed but there is error in conducting it or in limiting its scope, the remedy is by appeal. When an opportunity to be heard is denied all together, the ensuing mandate of the court is void, and the prisoner confined thereunder may have recourse through habeas corpus to put an end to the

restaint. It is beside the point to argue, as the Government does, that in this case a hearing if given, is likely to be futile because the judge has made it plain how his discretion will be exercised in that already he has canceled the suspension on the strength of an ex parte showing. The non sequitur is obvious. The judge is without the light whereby his discretion must be guided until a hearing, however summary, has been given the supposed offender. Cf. Snyder v. Massachusetts, 291 U.S. 97, 116. Judgement ceases to be judicial if there is condemnation before trial....[W]e hold that attempted revocation is invalid for defect of power...."

EXERCPT RESPONDENT NOYES' COUNTERCLAIM

COUNT I- HARRASSMENT

A. That on or about February 27, 190 and on October 23, 1990 the Plaintiffs filed a complaint with the Board of Licensure for Land Surveyors against Defendant in which the Plaintiffs alleged:(1) that the defendant was negligent in the preparation of a plan in 1976; and (2) that the Defendant had acted in an unprofessional toward a logger working on Plainyiffs' property.

B. That the Plaintiffs sent copies of the complaints to numerous individuals including the Governor, Governor's legal counsel, the U.S. Attorney, the Federal Bureau of Investigation, WHDH Channel 7, and others.

C. That on or about September 10, 1991 the Board promulgated a written opinion that the complaints against the Defendant had no merit and dismissed the complaints.

D. The Plaintiffs have engaged in and are continuing to engage in a course of conduct which is designed to annoy, intimidate, embarass and otherwise harass the Defendant.

E. That the actions of the Plaintiffs in pursuing their aforementioned course of conduct have caused the Defendant great stress, emotional pain and suffering, and monetary expenses.

COUNT II- ABUSE OF PROCESS

1. That on March 14, 1991 a pre-hearing conference was conducted by the Boatd of Licensure for Land Surveyors on complaints filed by Plaintiffs with the Board on February 27, 1990 and on October 23, 1990.

2. That on or about September 10, 1991 the Board unanimously promulgated its decision finding no professional misconduct on the part of Defendant and dismissing the Plaintiffs' complaints.

3. That the decision of the Board constituted an "order" within the meaning of RSA 310-A:71 and, as was "subject to rehearing and appeal in the manner prescribed by RSA 541."

4. The Plaintiffs have failed to follow the procedure set forth in RSA 541 for rehearing and appeal set forth therin.

5. The Defendant believes and avers that the Plaintiffs have not brought the within action for the purpose of righting any alleged wrong committed by the Defendant, but rather for the purpose of intimidation, annoying, and harassing the Defendant and causing him legal expenses.

6. That the failure of Plaintiffs to follow the statutory appeal procedure and the bringing of the within action constitutes an abuse of process. For this the Defendant is entitled to attorney's fees and costs.

COUNT III-FRIVOLOUS ACTION

The Defendant repeats each and every allegation contained in Counts I and II above and further says that because the Plaintiffs' complaint fails to state a cause of action against the Defendant, pursues a claim which is barred by the Statute of Limitation, and fails to follow the appeals procedures established by RSA 541, the Plaintiffs' action is a frivilous action within the meaning of RSA 507:15 for which the Defenant is entitled to attorney's fees and costs.

I

EXCERPT DAVIS v. SCHERER, 468 U.S. 183

Page 202

'..."[P]rocedural due process imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment... This Court consistently has held that some form of hearing is required before an individual is finally deprived of a property interest. Wolff v. McDonnell, 418 U.S. 539, 557-558 (1974). See, e.g. Phillips v. Commisioner, 283 U.S. 589, 596-597 (1931). See also Dent v. West Virginia, 129 U.S. 114, 124-125 (1889). The right to be heard before being condemned to suffer grevious loss of any kind, even though it may not involve stigma and hardships of a criminal coviction, is a principle basic to our society.' .....[T]he fundamental

opportunity to be heard 'at a meaningful time and in a meaningful manner...."

PAGE 206

'[I]n sum I believe that appellants' actions "violate[d] clearly established statutory or constitutional rights of which a reasonable person would have known," Harlow, 457 U.S. at 818, and I would therefore affirm the District Court's award of damages.

310-A:58 Rulemaking Authority. The board shall adopt rules, pursant to RSA 541-A, relative to:

I. The application procedure for license to practice under this chapter.

II. The qualifications and records of applicants in addition to those requirements set under this chapter;

III. How an applicant shall be examined, including the time and place of examination;

IV. How the license to practice under this chapter shall be renewed, including the requirements for continuing education;

V. The establishment of all fees required under this chapter;

VI. Ethical and professional standards required to be met by each holder of a license to practice under this chapter and how disciplinary actions by the

board shall be implimented for violations of these standards, including:

(a). Technical Standards for forest, rural, and urban surveys, including minimum error of closure; and

(b). Standards of adequate deed research into the history of the subject parcel and adjacent tracts necessary for proper practice:

VII. Matters related to the proper administration of this chapter; and

VIII. Procedures for conduct of hearings consistent with the requirements of due process.

AMENDMENT FOURTEEN UNITED STATES CONSTITUTION

(1) All persons born or naturalized in the United States, and are subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

AMENDMENT ONE CONSTITUTION OF THE UNITED STATES

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

STATE OF NEW HAMPSHIRE

Joint Board of Licensure and Certification

February 8, 1991

Robert F. Smith

Old Gile Road, PO Box 83

Nottingham, N.H. 03290

Dear Mr. Smith:

The Board is in receipt of your letters dated February 22 & 27, 1990 and January 22, 1991 stating your complaint against David Noyes relative to N.H. Statute and Code of Administrative Rules. The Board has reviewed your letters and proposes to process your complaint acknowledging you as complainant.

To this end the board has scheduled a pre-hearing conference in this matter to take place at its offices at 57 Regional

APPENDIX M

Drive, Concord, N.H. on March 14, 1991 at 3:30 P.M. 30 minutes has been allowed for this conference.

The following matters will be considered at the pre-hearing conference.

1) simplification of the issues in the proceeding;
2) stipulations or admissions as to issues of fact or proof by consent of the parties;
3) changes to standards procedures desired having any bearing on this matter by consent of the parties;
4) consolidation of examination of witnesses by the parties at hearing of this matter;
5) offers of settlement
6) any other matters that may aid in the disposition of this proceeding;

No formal testimony will be taken at this conference and any statements that you make will be without prejudice to

your ability to proceed to a formal hearing on this matter.

As complainant, you will be expected to be present to state your complaint against Mr. Noyes and to address such matters as stated above as may be appropriate. Failure to personally attend the pre-hearing conference to present your case may constitute default and may lead to the Boards dismissal of your complaint.

Thank you for your attention.

Sincerely,

S_____
Robert J. Carpenter, LLS
Chairman
57 Regional Dr., Concord, N.H. 03301

APPENDIX M-2

EXCERPT NEW HAMPSHIRE BOARD OF LICENSURE
FOR LAND SURVEYORS BUSINESS RECORDS
DATED 5/16/91-6/5/91 Pg 2

Complete business record attached to Petitioners MOTION FOR RECONSIDERATION WITH HEARING to the Court of Appeals.

6. Unfined business -

a. omitted

b. Smith v. Noyes Complaint - moved, seconded and voted 3-0 to dismiss complaint- Draft response for board/AG review.

c. omitted not relevant

d. omitted not relevant

e. omitted not relevant

f. omitted not relevant

g. omitted not relevant

h. omitted not relevant

i. omitted not relevant

j. omitted not relevant

k. omitted not relevant

l. omitted not relevant

m. omitted not relevant

APPENDIX N

EXCERPT APPEAL ASTRO SPECTACULAR 138 N.H. 298, 300 (1994)

"...[W]hen construing the meaning of a statute, we first examine the language found in the statute, Great Lakes Aircraft Co. v. City of Claremont, 135 N.H. 270, 277, 608 A.2d 840,845 (1992), "and where possible, we ascribe the plain and ordinary meanings to words used." Id. (qotation omitted); see RSA 21:2 (1988). Courts "can neither ignore the plain language of the legislation nor add words which the lawmakers did not see fit to include." Brown v. Brown, 133 N.H. 442, 445, 577 A.2d 1227, 1229 (1990) (qotation omitted). "[T] legislative intent is to be found not in what the legislature might have said, but rather in the meaning of what it did say." Corson v. Brown Prods., Inc., 119 N.H. 20, 23, 397 A.2d 640, 642 (1979)...."

EXCERPT ORDER NEW HAMPSHIRE SUPERIOR COURT OF NOVEMBER 2, 1994

Complete Court's Order attachment to pleadings U.S. District Court.

"...[A] hearing was held on the defendant's motion to attach on November 2, 1994. The plaintiffs appeared and agreed that they do not have substantial assets other than than the house they currentley live in. They argue, however, that there is no likelihood of the defendant prevailing on his counter claim because they did nothing wrong with their pursuit of what they claim is justice against him. They argue that all actions that they have taken against the defendant since 1992 have been a direct result of the Board of Licensure for Land Surveyors' illegal action of dismissing their complaint against the defendant without a formal hearing. They claim that illegal act forced them to bring a

lawsuit in this Court, which was subsequently dismissed, and forced them to file an appeal with both the New Hampshire Supreme Court as well as the Supreme Court of the United States. They also admit to recently filing a complaint in the United States Federal District Court over the same issue. The Court reviewed several documents that has been provided to it, one of which is a decision made by the Board of Licensure for Land Surveyors in March of 1991. That decision contains the following language: "The board believes that pursuit of this matter through a full disciplinary proceeding is not warranted and therefore the complaint is dismissed". The notice also contains the following language regarding another complaint made by the plaintiffs against the defendant: "The board believes pursuit of this matter through a full disciplinary hearing has no basis and

thus the complaint is dismissed". The plaintiffs argue that although they were told the board dismissed their complaints they feel they have no obligation to attempt to appeal that decision in a timely fashion because the decision was illegal.

After hearing offers of proof from the parties the Court makes a preliminary finding that the defendant is likely to prevail in his counterclaim. Based upon the plaintiffs' admission that their sole asset of any substantial value is their real estate, the Court Grants the defendant's motion and orders an attachment on that real estate forthwith. The setting of the amount of the attachment is most difficult. The defendant concedes that his attorney fee claim at present is less than $5,000. It is difficult to put a value on the loss of reputation and other damages that he might have suffered in the absence of

taking formal evidence. However, based upon what the Court has heard by way of offer of proof it finds that the defendant is entitled to a real estate attachment in the sum of $15,000.

(Petitioners' emphasis added)

So ordered

Dated November 2, 1994
S/_____
Kenneth R. McHugh
Presiding Justice

EXCERPT Question IV, CIVIL COVER SHEET COMPLAINT UNITED STAES DISTRICT COURT DISTRICT OF NEW HAMPSHIRE

Violations of U.S.C. Amends. Amends I & 14, & 42 U.S.C. Sec. 1983. Plaintiffs' filed a complaint with the N.H. Board of Licensure for Land Surveyors against Noyes, Board knowing the "state of the law" gave safeguards to Plaintiffs a hearing would be held as mandated by New Hampshire Revised Statutes 310-A:71. BLLS in conspiracy with Noyes violated those safeguards and dismissed Plaintiffs' complaint without a hearing. This fraudulent order/dismissal has interfered with Plaintiffs' rights to due process in additional claims against Noyes as well as damaging Plaintiffs in person and property.

APPENDIX Q

Excerpt, Correa-Martinez v. Arrillaga-Belandez, 903 F.2d 49, 53 (1st Cir. 1990)

' "...[C]onstitutionaly protected property interests originate in extra-constitutional sources; they are 'created and their dimensions are defined by existing rules or understandings that stem from independent source such as state law...."'

APPENDIX R

AMENDMENT FIVE CONSTITUTION OF THE UNITED STATES

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentation or indictment of a Grand Jury, except in cases arising in land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just comprnsation.

EXCERPT REGENTS OF THE UNIVERSITY OF CALIFORNIA v. BAKKE, 438 U.S. 265

"...[N]o state shall ...deny to any person within its jurisdiction the equal protection of the laws." It is settled beyond question that the "rights created by the first section of the Fourteenth Amendment are, by its terms, guaranteed to the individual"....."[T]he guarantee of equal protection cannot mean one thing when applied to one individual and something else when applied to a person of another color. If both are not accorded the same protection, then it is not equal...."

42 U.S.C.Section 1983

Any person who under the color of any statute, ordinance, regulation, custom or usage of any State or Territory subjects any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in any action at law, suit in equity, or other proceedings for redress.

N.H. RSA-310:53 GENERAL PROVISIONS.

I. In order to safeguard property and to promote the public welfare, the practice of land surveying in this state is hereby declared to be subject to regulation in the public interest.

APPENDIX V